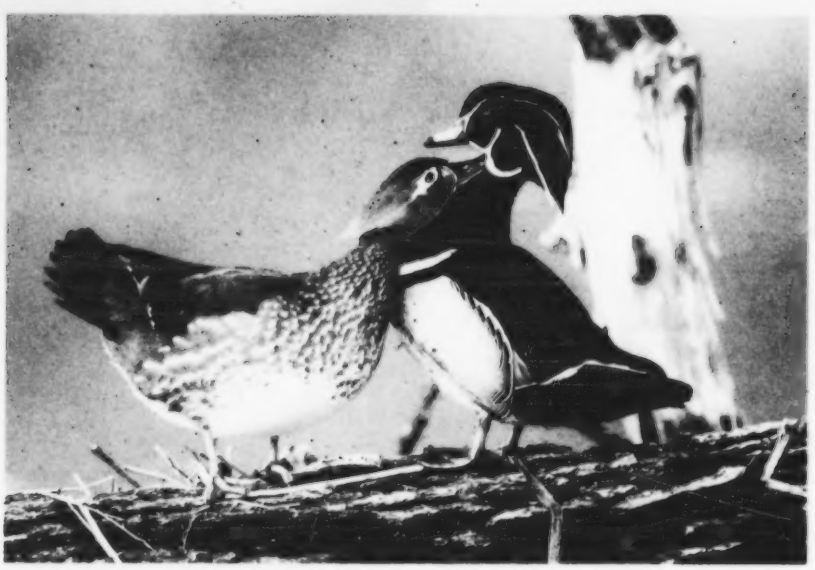
the Ontario Ecogifts Handbook 2003

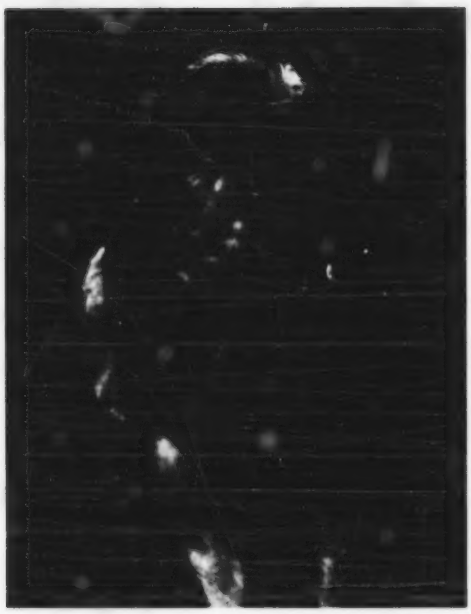
Monarch (photo by John Mitchell)



Wood Duck (Photo by Tim Jones)

Environment Canada
Environnement Canada

Ontario Region
Région de l'Ontario



Red-shouldered Hawk photo by John Mitchell

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Copies are available from:
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Ecogifts.Ontario@ec.gc.ca

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www.on.ec.gc.ca/ecogifts

Read this report on-line: www.on.ec.gc.ca/wildlife. Select Publications. Print or download at no charge.

Également disponsible en français sous le titre : *Guide pour les dons écologiques en Ontario 2003.*

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photo by: John Mitchell

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Introduction

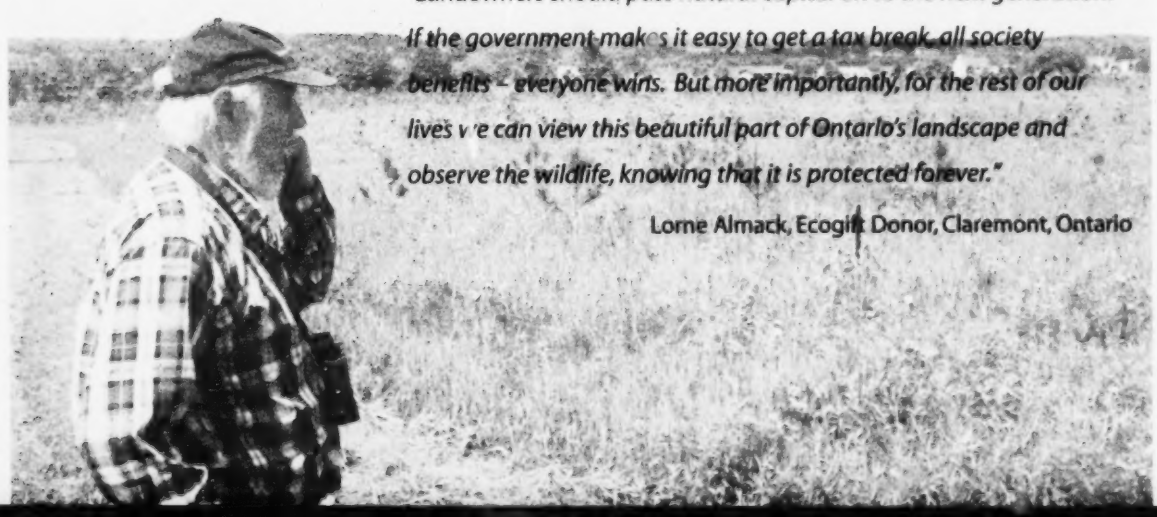
Background

Since 1994, under the provisions of the *Income Tax Act* (Canada), the Ecological Gifts Program (EGP) has provided favourable income tax treatment to donors of ecologically sensitive lands (ecogifts), including conservation easements. A series of *Income Tax Act* amendments resulting from the 1995, 1997, and 2000 federal Budgets, and the fall 2000 economic statement, have allowed donors of ecogifts to apply the value of their gifts more fully against their income, and to reduce the taxable amount of the related capital gains.

This handbook replaces the 2001 version and is designed specifically for use by eligible recipients under the EGP in Ontario – that is, the charities, municipalities, and the Crown that are eligible to receive gifts of ecologically sensitive lands. It pulls together information about the program from various sources, lays out the steps to be followed in the three approval processes under the program, and identifies the responsibilities of organizations involved in ecogift donations. It also attempts to anticipate questions that potential donors might ask and to provide information so that organizations can respond quickly and accurately.

The EGP has evolved rapidly and continues to evolve as more experience is gained in dealing with new aspects, particularly the review of appraisals of ecogifts and the treatment of conservation easements. The handbook will be updated as needed. Suggestions for changes or additional information are welcome.

photo by Canadian Wildlife Service



"Landowners should pass natural capital on to the next generation. If the government makes it easy to get a tax break, all society benefits – everyone wins. But more importantly, for the rest of our lives we can view this beautiful part of Ontario's landscape and observe the wildlife, knowing that it is protected forever."

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Introduction

Ontario Donor Survey

A telephone survey of donors of ecologically sensitive land commissioned by Environment Canada – Ontario Region points to the significant role donors play in initiating donations in their communities. It also confirms the strong and increasing role non-government organizations have in acquiring land for conservation.

Donors of ecogifts (1995 to 2001) and non-ecogift donors of natural lands (2000 to 2001) were contacted. The survey showed that individual donors of full or partial title (such as conservation easements) are older and have a higher income than the general population. The survey also clearly showed that the overwhelming majority of donations of ecologically sensitive land went to nature conservation charities rather than to government agencies. Moreover, donors are key to promoting land donation and initiating donations in their community – 58 percent of donors actively promote land donation in their community and 25 percent will discuss their gift if asked.

Using the Ontario Ecogifts Handbook

Recipients of ecogifts must be familiar with three approval processes, which are outlined in the main sections of this handbook:
Qualifying as an eligible recipient – see *Eligible Recipient* section;
Certifying a property as ecologically sensitive – see *Ecological Sensitivity* section; and,
Certifying the fair market value of a donation – see *Fair Market Value* section.

Once the three approval processes are complete, donors of eligible lands may receive a *Certificate for Donation of Ecologically Sensitive Land* and a *Statement of Fair Market Value* from Environment Canada for use with their income tax returns. They should also receive an official donation receipt from the recipient of the donation.

Recipients should be able to explain to potential donors the general tax advantages of the EGP. However, since each landowner's tax situation is unique, it is important to remember that the advice of a qualified professional will be needed to assess the benefits for individual donors.

Why encourage participation in the Ecological Gifts Program?

Since 1995, the EGP has become a valuable tool in conserving threatened habitats and biodiversity. As a partnership among landowners, conservation organizations, and government, it provides favourable income tax treatment for land or conservation easement donations, and greater awareness of the value of individual conservation actions.

Across Canada, the program has fostered over 290 ecogifts covering 20,000 hectares of wetland, forest, alvar and other important habitats. Over 230 Ontarians have made more than 130 ecogifts collectively valued at over $20 million.

In dealing with potential donors, recipients will find that most people are interested in the favourable income tax treatment that the EGP provides. But for almost all donors, the underlying motivation is the desire to do something meaningful to protect nature and to leave something of great value for future generations. The EGP helps many people to act on that motivation, to the benefit of all Canadians.

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Contacts for information and assistance

The EGP will succeed if both donors and recipients understand its benefits, and if they are able to proceed through the necessary approval processes smoothly. There are many sources of assistance that should be used whenever questions arise.

Environment Canada

- The EGP-Ontario Region Web site (**www.on.ec.gc.ca/ecogifts**) includes background on the program, frequently asked questions and ongoing updates.
- Ecological Gifts Program staff – contact the Ontario Region office at **(416) 739-5828** or **(416) 739-4286**, or by e-mail at **Ecogifts.Ontario@ec.gc.ca**.
- The EGP-National Web site (**www.cws-scf.ec.gc.ca/ecogifts**) includes application forms, guidelines, and the list of eligible recipients.
- The National coordinator at **1-800-668-6767**, or by e-mail at **Ecogifts@ec.gc.ca**.

Publications/Resources

Available online and from the Ontario Region Office.

Ecological Gifts – Canadians Donating Ecologically Sensitive Land (Donor brochure)

Answers to Donors' Questions

Answers to Recipients' Questions

Donor Profiles

Tax Treatment of Ecogifts 2002

Guidelines for Appraisals

Appraisal Review Panel Operational Guidelines

The Canada Customs and Revenue Agency

- Canada Customs and Revenue Agency (CCRA)-Charities at **1-800-267-2384** (English), **1-800-892-5667** (bilingual) or **www.ccra-adrc.gc.ca**.

The CCRA has a number of relevant publications available on their Web site or by ordering at **1-800-959-2221**. These include:

i) *Gifts and Income Tax*: Publication P113 (**www.ccra-adrc.gc.ca/E/pub/tg/P113/ README.html**)

ii) *Gifts and Official Donation Receipts*: Publication IT-110R3 (**www.ccra-adrc. gc.ca/E/pub/tp/i110r3em**)

iii) *Registered Charities and the Income Tax Act*: Publication RC 4108 (E) (**www.ccra-adrc.gc.ca/E/pub/tg/rc4108/rc4108eq.html**)

iv) *Income Tax Technical News - Proposed Guidelines on Split-Receipting* (**www.ccra-adrc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf**)

Tax benefits

Most donors who participate in the EGP do not do so primarily for financial reasons. However, as an incentive to take part, and to assist those who could not otherwise afford to participate, the *Income Tax Act* provides favourable income tax treatment for gifts of ecologically sensitive land. This includes:

- the provision of a tax credit (or deduction); and,
- a reduction in the taxable capital gain realized on the disposition of the property.

Corporate donors may deduct the amount of their ecogift directly from their taxable income, while the value of an individual's ecogift is converted to a non-refundable tax credit. The tax credit is calculated by applying a rate of 16 percent to the first $200 of the donor's total gifts for the year and 29 percent to the balance. There is also a further reduction in provincial tax payable.

Ecogifts are not subject to the usual charitable donation limits: the entire donation receipt can be applied against the donor's entire income to generate tax credits. Any unused portion of the donor's donation receipt may be carried forward up to five years.

Donors of ecogifts also receive a reduction in the taxable capital gain realized on the disposition of the property. For most gifts, the taxable portion is 50 percent. For ecogifts, it is only 25 percent.

Tax scenarios giving generalized examples are available from the EGP Web site or staff. The tax scenarios are simple illustrations and should not be relied on as tax advice. Donors should be advised to obtain the advice of a qualified professional to assess the legal and tax implications of any donation.

Qualifying as an Eligible Recipient

Who can receive ecogifts of land or easements?

In Ontario, three categories of organizations can qualify as eligible recipients – the Crown, municipalities, and eligible registered charities.

■ The Crown

Federal or provincial government agencies are automatically eligible to receive ecogifts. Government bodies (e.g., the Ministry of Natural Resources) and related agencies (e.g., the Ontario Heritage Foundation) are included.

■ Municipalities

Any incorporated municipality is automatically eligible to receive ecogifts, including both local and regional or county municipalities.

■ Qualified Registered Charities

Non-government organizations can receive ecogifts only if they have been approved by the Minister of the Environment (Environment Canada) as an eligible registered charity. To be considered for approval, an organization must meet the following criteria:

- It must have Registered Charity status with the Canada Customs and Revenue Agency and maintain this status from year to year;
- One of its main purposes, in the opinion of the Minister of the Environment, must include "the conservation and protection of environmental heritage"; and,
- It must have filed an application with Environment Canada requesting to be eligible, and showing its willingness and capacity to receive such gifts.

How to apply to become an eligible registered charity

There are no formal application forms. Potential recipients should read the criteria under "Who can receive ecogifts of land or easements?" and send a written request to: National Coordinator, Ecological Gifts Program, Canadian Wildlife Service, Environment Canada, 351 St. Joseph Blvd., Gatineau, QC, K1A 0H3; fax (819) 953-3575; or e-mail Ecogifts@ec.gc.ca.

Include the following information:

- ✓ Full contact details – business address, e-mail, fax, and phone;
- ✓ The organization's Business Number and Charitable Registration Number;
- ✓ A copy of the organization's full statement of purpose, such as the statement of objects included in the letters patent or incorporation papers; and,
- ✓ An explanation of the mission of the organization, and some examples of the kinds of projects being undertaken, are also recommended.

A response from Environment Canada can be expected within a few weeks; if there is urgency for qualifying (such as an impending donation), include that information in the application letter.

Environment Canada regularly updates and reviews the list of eligible registered charities, which is available on the EGP-National Web site (www.cws-scf.ec.gc.ca/ecogifts), so donors can check on the status of organizations they are considering. Already, over 60 Ontario organizations are on this list. Organizations that fail to file annual tax returns with the CCRA and thus lose their charitable status will be removed from the list. Other circumstances may also result in charities being removed from the list of eligible recipients by Environment Canada.

Charities only have to apply once to become an eligible recipient. Under some circumstances (e.g., failure to maintain charitable status), charities may be removed from the list of eligible recipients. Municipalities and the Crown are automatically eligible.

photo by: John Mitchell

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Qualifying as an Eligible Recipient

Responsibilities of a recipient

Organizations that accept gifts of ecologically sensitive lands have an obligation to perpetually maintain the ecological and natural heritage values on these properties. General responsibilities could include paying taxes (or applying for property tax exemption under the provincial Conservation Land Tax Incentive Program), monitoring to ensure visitor safety and prevent abuse, carrying liability insurance, and so on. The Land Management chapter in the Ontario Nature Trust Alliance *Land Securement Manual* provides more detail on management practices (available from the Rideau Waterway Land Trust Foundation, 1 Jasper Ave., Smiths Falls, ON, K7A 4B5; tel. (613) 284-2010). The Nature Conservancy of Canada's *Stewardship Manual* also contains details on management practices (available from its Web site at www.natureconservancy.ca/files/frame.asp?lang=e_&region=1&sec=science).

A handy reference on many aspects of recipient responsibilities is the Ontario Land Trust Alliance's *Standards and Practices* (available from the Ontario Land Trust Alliance). As well as the Land Trust Alliance (U.S.) *Standards and Practices* (available from its Web site at www.lta.org).

Before accepting an ecogift, recipients should consider all responsibilities and ensure they have financial and human resources to carry them out in the long term.

What about conservation authorities?

Conservation authorities apply as registered charities, either directly if they have charitable status or indirectly through their conservation foundations.

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Qualifying as an Eligible Recipient

What if the donor is an American citizen without Canadian income?

Recipients in Ontario can work with U.S. conservation groups, particularly The Nature Conservancy (U.S.), to arrange donations of properties by U.S. citizens. One of the most experienced organizations with these transactions is The Nature Conservancy of Canada, who can be contacted at (519) 826-0068 for more information.

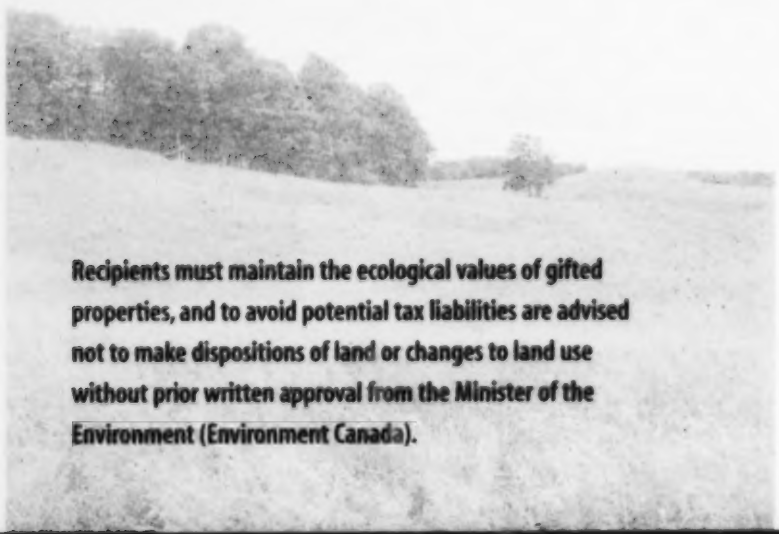
What safeguards are there?

The *Income Tax Act* includes provision for a tax liability for unapproved land use changes and dispositions (such as sales, transfers) of properties donated pursuant to the Ecological Gifts Program. A federal tax equal to 50 percent of the fair market value of the property at the time of the change or disposition may be imposed on charitable or municipal recipients. The Canada Customs and Revenue Agency is responsible for administration of this tax.

Recipients could be subject to tax if they transfer or otherwise dispose of ecological gifts, or make land use changes, without prior written approval from the Minister of the Environment (Environment Canada), including both ecogift donations of title and conservation easements.

In practice, land transfers or changes in use that are consistent with the original objectives of the ecogift are likely to be approved (e.g., if the original recipient wanted to transfer ownership of an ecogift to another eligible conservation organization). So would a change in land use that enhanced or restored the conservation value of the property, such as an end to commercial logging. Changes that are required by law or for public safety are also likely to be approved (e.g., removal of a safety hazard such as dying trees overhanging a trail).

Recipients should write to Environment Canada in advance of any proposed disposition or use change at: Ecological Gifts Program, Canadian Wildlife Service, Environment Canada, 4905 Dufferin St., Downsview, ON, M3H 5T4. Environment Canada will write back with an approval or any concerns.



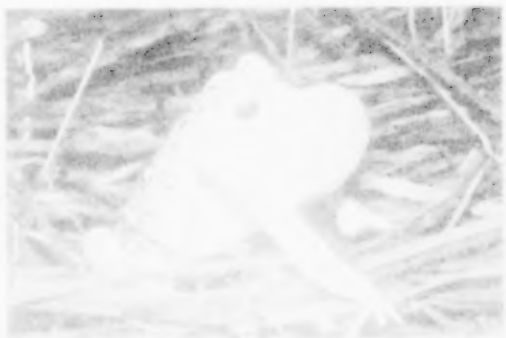
Recipients must maintain the ecological values of gifted properties, and to avoid potential tax liabilities are advised not to make dispositions of land or changes to land use without prior written approval from the Minister of the Environment (Environment Canada).

Checklist for qualifying as an eligible recipient

- ✓ Status as a registered charity, municipality, or the Crown

For charities:

- ✓ Inclusion of conservation purposes in letters patent
- ✓ Letter of application sent to Environment Canada



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Checklist for qualifying as an eligible recipient

For charities:

- ✓ **Inclusion of conservation purposes in letters patent**
- ✓ **Letter of application sent to Environment Canada**

What help might donors expect?

One of the most important roles of a recipient is to guide donors through the donation and ecogift processes. Recipients need to be able to explain the steps to donors so they know what to expect, and be ready to answer any questions they might have about the process. If necessary, recipients refer donors to the Ontario Region office of Environment Canada for further information. Recipients often also take the lead on providing such services as:

- evaluating the ecological character of the property, and documenting how it meets the ecological sensitivity certification criteria;
- arranging for any surveys or land use approvals such as severances needed to complete the property transfer;
- arranging for an appraisal of fair market value of the donation by a qualified appraiser; and,
- coordinating the applications to certify the property and its fair market value.

Recipients can make a donation easier by guiding donors through the process, and arranging necessary services such as surveys and appraisals.

There is no fee to certify land as an ecogift. However, there are costs associated with donating land and preparing the necessary documentation. Deciding who commissions and pays for surveys, appraisals, and other related costs may be a matter of policy for the recipient, or may be negotiable between the donor and recipient depending on the resources and commitment of those involved. The Ontario Nature Trust Alliance *Land Securement Manual* (see p. 6) provides a valuable reference on the detailed steps involved at all stages of a land or conservation easement donation.

Certifying a Property as Ecologically Sensitive

Each donation of land or conservation easement must be individually certified as ecologically sensitive before it can be included under this program. In Ontario, Environment Canada's regional staff carry out this certification on behalf of the Minister of the Environment and issue a *Certificate for Donation of Ecologically Sensitive Land,* which must accompany the donor's income tax return.

The general definition of ecologically sensitive lands is "areas or sites that currently, or in the future, could significantly contribute to the conservation of Canada's biodiversity and natural environmental heritage".

Not every donated property or conservation easement will qualify as an ecogift – to do so, a property must meet one or more of a set of criteria developed specifically for Ontario. As shown on the list (pages 12 and 13), in Ontario this definition includes 19 specific categories of qualified lands (the "A" list), and a further 11 general criteria for other lands that may qualify as ecologically sensitive (the "B" List).

If the property under consideration meets one of the "A" list criteria – for example, if it contains a Provincially Significant Wetland – it will likely be certified with minimal discussion. To qualify a property under the more general "B" list criteria, recipients or donors are expected to provide a more detailed rationale for how it meets one or more of the criteria – in essence, to make the case for why it should qualify as ecologically sensitive.

The three-step ecological sensitivity certification process

Step ONE
Arrange the donation

Step TWO
Filing the ecological information

Step THREE
Environment Canada reviews and issues Certificate

Certifying a Property as Ecologically Sensitive

Step ONE
Arrange the donation

Donors of natural lands and conservation easements may have a variety of motives, and may link up with a particular recipient through a variety of formal or informal mechanisms. In most cases, at the stage when a landowner is seriously discussing a donation, the issue of tax treatment will arise and the potential advantages of the EGP will become apparent. These advantages will differ between individual and corporate taxpayers – both can take part in the program.

Recipients must advise the potential donors that they should seek independent legal and financial advice, to ensure that the implications of the donation in their particular tax situation are understood. Providing background information on the EGP to those advisors can often be helpful, since many of them are not yet fully familiar with its provisions.

Information to determine whether the property can be certified as ecologically sensitive under the EGP can be filed at any stage in this process. It is not necessary to have a signed legal agreement before filing; on the other hand, information can also be filed up to three years after the year in which the property or conservation easement donation was made.

Some donors will want confirmation that their property qualifies as ecologically sensitive as well as an appraised value before completing their donation: however, recipients should seek at least a letter of commitment at an early stage.

Certifying a Property as Ecologically Sensitive

Additional information is available from the CCRA

photo by Canadian Wildlife Service

- *Gifts and Income Tax* (www.ccra-adrc.gc.ca/E/pub/tg/p113eq)
- *Gifts and Official Donation Receipts*, IT-110R3 (www.ccra-adrc.gc.ca/E/pub/tp/i110r3em)
- *Income Tax Technical News No. 26 - Proposed Guidelines on Split-Receipting* (www.ccra-adrc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf)

Is this really a gift?

While the federal Minister of the Environment (Environment Canada) certifies the ecological sensitivity, recipient and fair market value of ecogifts, it is up to donors to ensure their donations meet the definition of a gift under Canadian income tax law. In certifying the ecological sensitivity, recipient and fair market value, neither the Minister of the Environment nor Environment Canada is determining whether the transfer of title or of the conservation easement qualifies as a gift for the purposes of the *Income Tax Act* (see "What is a gift?").

It is strongly recommended that donors consult professional, independent tax and legal advisors to discuss all implications of the donation, including this aspect.

In order to issue an official donation receipt, a recipient must also be sure that the property or conservation easement being accepted fully qualifies as a gift to ensure that official donation receipts are not provided inappropriately. If there is any question about whether an individual transfer qualifies as a gift for tax purposes, contact your legal advisors or the CCRA for a ruling.

At the time this handbook was written, the Canada Customs and Revenue Agency had released draft guidelines on proposed amendments to the *Income Tax Act* regarding an administrative approach to split-receipting. These guidelines may affect the definition of a gift. The proposed guidelines can be found in *Income Tax Technical News No. 26 - Proposed Guidelines on Split-Receipting* (www.ccra-adrc.gc.ca/E/pub/tp/itnews-26/itnews-26-e.pdf).

Inventory lands

Inventory land is land that has been acquired for resale during the course of the owner's business. Examples include developed or undeveloped lots owned by a developer and intended for sale. Capital property, on the other hand, is generally purchased either for long-term business use, such as farming, or for personal use.

Owners of inventory land may make donations under the EGP, and are still eligible to have the full value of their gift recognized as a charitable donation. However, such gifts are not subject to the same tax benefits as gifts of capital property. All profits derived from the disposition of inventory land must be included in the taxpayer's income for the year, while only a portion of the capital gain must be included for capital property.

Certifying a Property as Ecologically Sensitive

Definition of Ecologically Sensitive Lands: Ontario

A) Specific Categories of Qualified Lands

Lands, easements or covenants relative to such lands, which fall into one or more of the following categories, shall be deemed to be ecologically sensitive lands in Ontario:

A1. Significant portions of the habitat of species determined to be endangered, threatened or vulnerable in Ontario, as specified in a recovery plan or other biological study;

A2. Areas designated as Provincially Significant Wetlands;

A3. Provincial or regional Areas of Natural and Scientific Interest;

A4. Designated Areas of Concern for biodiversity purposes as identified in Forest Management Plans;

A5. Areas qualifying for the Conservation Land Tax Reduction Program;

A6. Areas managed for wildlife habitat conservation purposes that qualify under the Managed Forest Tax Reduction Program;

A7. Areas promoting the conservation of natural heritage and biodiversity that are identified within a regional or watershed plan or strategy developed by a recognized conservation organization;

A8. Areas designated as a World Heritage Site for biodiversity conservation purposes, a core area of a UNESCO Biosphere Reserve, or a Wetland of International Importance under the Ramsar Convention;

A9. Areas of biodiversity significance identified in a Canadian Heritage Rivers Management Plan or Strategy;

A10. Areas designated in the Niagara Escarpment Plan as an Escarpment Protection Area or an Escarpment Natural Area;

NEW **A11.** Areas designated as Natural Core, Natural Linkage, Sensitive Hydrological Feature, High Aquifer Vulnerability, Significant Landform, Minimum Areas of Influence or Minimum Vegetation Protection Zones within the Oak Ridges Moraine Conservation Plan;

A12. Areas designated Core Area, Corridor or Restoration Area in the Lake Ontario Greenway Strategy;

A13. Areas designated for biodiversity conservation purposes within Management Plans or Strategies for the Trent-Severn or Rideau Waterways;

A14. Areas within a municipal official plan or zoning by-law under the *Planning Act* (Ontario) designated as an Environmentally Sensitive Area, Environmentally Significant Area, Environmental Protection Area, Restoration Area, Natural Heritage System or other designation for similar purposes that is compatible with the conservation of the biodiversity, ecological features and functions of the site;

A15. Areas within or adjacent to a Provincial Park, Provincial Park Reserve, Conservation Reserve, Conservation Area, Wilderness Area, Provincial Wildlife Area, National Wildlife Area, Migratory Bird Sanctuary, National Park, National Park Reserve or Ecological or Nature Reserve managed by a government or non-government agency;

A16. Municipal parks or other protected areas designated or managed for biodiversity conservation purposes;

A17. Areas identified as Carolinian Canada sites or alternate sites;

A18. Areas designated as Core Natural Area, Natural Area Buffer, Natural Area Link, or Valued Ecosystem Component in the National Capital Greenbelt Master Plan by the National Capital Commission; and,

A19. Areas designated for biodiversity purposes by regional agencies such as the Niagara Parks Commission, St. Clair Parkway Commission, St. Lawrence Parks Commission and the Waterfront Regeneration Trust.

Certifying a Property as Ecologically Sensitive

ONTARIO ECOGIFTS HANDBOOK

B) General Criteria for Other Ecologically Sensitive Lands

Lands, easements or covenants relative to such lands, which meet one or more of the following general criteria may also be considered to be ecologically sensitive lands in Ontario – subject to the approval of the federal Minister of the Environment or a person designated by the Minister for this purpose. The term "significant" for the purposes below refers to definitions provided in Provincial Policy Statements.

B1. Significant habitats such as alvars, prairies, cliffs, Great Lakes coastal habitats, old growth forest areas, glacial relic communities and sites with enduring geological features that contribute to biodiversity;

B2. Areas of wildlife concentration such as bat caves, snake hibernacula, heronries, deer wintering yards and sites used by migratory water birds and other species for seasonal staging, feeding, breeding and like purposes;

B3. Areas identified, designated or protected as ecologically significant or ecologically important by a government or non-government local, provincial, national or international system or body;

B4. Significant water bodies, rivers, streams, shorelines, valleys, wetlands, groundwater recharge areas, headwaters and aquifers;

B5. Significant wildlife or fish habitats;

B6. Significant woodlands;

B7. Areas that have significant current or potential for enhanced ecological values through restoration, remediation, management or geographic proximity to other ecologically significant properties;

B8. Natural buffers and adjacent lands around areas identified under other ecologically sensitive lands categories or criteria that contribute to the conservation of biodiversity;

B9. Natural links or corridors between areas identified under other ecologically sensitive lands categories or criteria that contribute to the conservation of biodiversity;

B10. Areas used for long-term scientific study or baseline and benchmark monitoring of biodiversity; and,

B11. Areas that contribute to Canada's environmental heritage through the maintenance of the genetic diversity of species, ecosystem health, or landscape biodiversity, and other natural spaces of significance to the environment in which they are located.

The categories and criteria listed above, for the purposes of implementation of provisions in the *Income Tax Act* for ecogifts, have been agreed to by representatives of the Governments of Ontario and Canada. This list and criteria may be further elaborated and amended by agreement between Environment Canada and the Ontario Ministry of Natural Resources.

Certifying a Property as Ecologically Sensitive

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Step TWO
Filing the ecological information

There are no formal application forms for the ecological sensitivity certification process. Instead, recipients or donors need to provide the following information including a brief synopsis of the ecological character of the proposed ecologically sensitive lands. Two pages of supporting information are often enough – see the sample (p.15). The information should be sent to Ecological Gifts Program, Canadian Wildlife Service, Environment Canada, 4905 Dufferin St., Downsview, ON, M3H 5T4.

- Full name, address, and Social Insurance Number (SIN) or Business Number for the donor;
- Name, address, and charitable registration number (if applicable) of the recipient;
- Complete legal description of the property under a Land Titles or Land Registry system (general location descriptions are not acceptable);
- Type of donation – title to the land or conservation easement;
- Area, in hectares, of the land area being donated; if an easement applies to only a portion of the site, record only the gifted area; if the property is not surveyed, an approximate area is acceptable to start;
- Confirmation that the recipient is eligible, either through reference to the list on the EGP-National Web site, or by application as outlined in the previous section;
- A description of the current status of the donation (letter of intent, legal agreement, property transfer registered, etc.) and anticipated timing to completion;
- An assessment of ecological character (as outlined below and shown in the shaded area of the sample p. 15):
  - A short paragraph summarizing the property's ecological values, ecogifts criteria met, and an assessment of the present condition of and threats to the site;
  - The proportion of the total area of the property in wetland, forest, grassland, dune, or alvar; and whether shorelines, watercourses, Great Lakes coast or cliffs are present;
  - A description of any significant species present;
  - A description of any buildings or other permanent structures on the property;
  - A listing of any reports or documents where the flora and vegetation communities or other indicators of biodiversity of the site have been recorded – refer to these reports but do not submit copies unless requested;
  - A listing of which criteria from the "A" or "B" list are met by the property under consideration, with a brief explanation of how each criterion is fulfilled; if field assessment is necessary to provide reliable information (especially to meet "B" criteria), that is the responsibility of the donor or recipient;
  - Reference to any local, regional, national, international or other formal ranking of the significance of the site, and to the reports in which this ranking is noted;
  - Any site enhancement or rehabilitation measures proposed to upgrade the ecological quality of the property; and,
  - A map of the site, clearly indicating the area of the donation, the significant features and where it is located.
- Comment on why the donation is being made, and the recipient's intentions for its future management or enhancement, including whether a formal management plan is to be developed. Is changing the current use or ecological character or selling of all or part of the land proposed?

Certifying a Property as Ecologically Sensitive

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- A map of the site, clearly indicating the area of the donation, the significant features and where it is located.

- Comment on why the donation is being made, and the recipient's intentions for its future management or enhancement, including whether a formal management plan is to be developed. Is changing the current use or ecological character or selling of all or part of the land proposed?

Certifying a Property as Ecologically Sensitive

SAMPLE INFORMATION for DONATION of ECOLOGICALLY SENSITIVE LAND

Donor **Name** Jane Doe **SIN** 555-555-555

Address 123 Elm Street, Whatsitville, ON, 5N5 2T9

Recipient **Name** Sparkle Creek Land Trust

Address 22 Main Street, Whatsitville, ON, 5N5 2T0 **Charitable Tax Number** Registered Charity # 156756h788-67

Legal Description Part of Lot 27, Concession 5, Municipalty of Whatsitville, Wherever Co. (the Smith property, 'Fred's Woods')

Type of Donation A Conservation Easement under the Ontario *Conservation Land Act*. **Area** 45 hectares

Certification of Recipient Sparkle Creek Land Trust is listed by Environment Canada on its list of qualified recipient agencies, as noted on the Ecological Gifts Program-National Web site.

Assessment of Ecological Character

The land in question is known as Fred's Woods. Approximately half the property is gently rolling to flat upland, with some limestone outcroppings and low cliffs. The remainder is floodplain/lowland with Sparkle Creek forming much of the eastern border of the property. Most of the property is forested but 10% is taken up by an old field and an adjoining residence and barn. The site provides both terrestrial and aquatic wildlife habitat, serves as a wildlife corridor, and is habitat for species at risk. The lowland and much of the upland is part of the Sparkle Creek/Fred's Woods ESA and the Ministry of Natural Resources has identified Sparkle Creek as Brook Trout habitat. The property is in good condition, having been left by the current owner in its natural state for 40 years, with no logging having occurred in the past 80 years. The landowner is actively removing invasive exotic species from the old field and selectively planting native plants to encourage grassland bird species. Threats include subdivision for housing, and upstream development and agriculture causing siltation of Sparkle Creek.

Status of Donation

Yet to be made, anticipate completion by calendar year-end, need to receive Notice of Determination of Fair Market Value before closing will occur.

Habitat and Site Characteristics

The property is approximately 80% forest, 10% wetland, 5% grassland and 5% residential/lawn.

FOREST: 25% Maple-Beech forest on dry to fresh soils, 20% Maple-White Ash forest on dry soils, 30% White Cedar - hardwood forest on moist soil, 5% White Pine Plantation on dry soils

WETLAND: 10% White Cedar Swamp

GRASSLAND: 5% old field on dry soils

LAWN/RESIDENTIAL: 5% lawn

✓ Riverine/riparian zone ✓ Cliff

✗ No coastal, dune or alvar communities present

Species Present

See attached lists from local naturalist club and landowner.

Species at Risk Present

Hart's Tongue Fern (COSEWIC Species of Special Concern)

Structures on Property

One house, an old barn and a garden shed.

Ecological Information Sources

- Local office of the Ministry of Natural Resources – habitat for Brook Trout.
- Sparkle Creek/Fred's Woods ESA report (Municipality of Whatsitville).
- The local naturalist club has also compiled species lists for this area.

Specific 'A' or 'B' Criteria Applicable to Property

A-1 Hart's Tongue Fern - Federal Species of Special Concern. Noted by local naturalist club, reported to OMNR by Sparkle Creek Land Trust

A-5 Conservation Land Tax Incentive Program – landowner has successfully applied to CLTIP

A-14 Sparkle Creek/Fred's Woods ESA (municipal)

B-5 Fish Habitat for Brook Trout noted by OMNR (Mr. Pike, pers. comm.)

B-9 Part of forested corridor along Sparkle Creek within ESA. Observations of use by deer, also noted in ESA report.

Local, Regional, Provincial, National or International ranking for site significance

ESA – municipal

Purpose of the Donation and Future Intentions

The donor wished to see her land protected from surrounding development, but still wanted to be able to sell it. She was also interested in the tax benefits of donation. The property is to be preserved, with only minimal logging or development of additional structures allowed. Please see attached easement document. The current use and ecological character of the site will be unchanged and the donor is aware of the permanent legal restrictions applied by the conservation easement.

Attached

Site map, species lists, draft conservation easement document.

Certifying a Property as Ecologically Sensitive

What about selling ecogifts? What if only part of the gifted property is to be retained?

In some circumstances, recipients may wish to accept then sell properties that are being donated with the intent of generating revenue for the purchase of other conservation lands. Such sales will not usually be accommodated under the EGP. In other similar circumstances, recipients may wish to keep only the ecologically sensitive portions of a donated property (e.g., the wetland) and sell the remainder (e.g., active farmlands). Likewise, these kinds of arrangements will not usually be accommodated under the EGP. Any unapproved disposition of title could trigger tax liability under the *Income Tax Act*.

What if the donor refuses to provide a SIN?

Submitting a Social Insurance Number (SIN) with the ecological sensitivity information expedites the process. However, a few individual donors may be hesitant to provide their SIN to recipients. This information is required by the Canada Customs and Revenue Agency to provide legal proof of the linkage of the donation to their income tax return. If donors prefer, they may provide their SIN directly to EGP-Ontario Region staff in writing or by calling (416) 739-4286. The *Certificate for Donation of Ecologically Sensitive Land* issued by Environment Canada is treated as a protected document under the *Income Tax Act* to protect the privacy of the donor. The identity of donors and the particulars of their gift will be known by Environment Canada and the recipient (who receives a copy of the *Certificate, Notice* and *Statement*) and should be kept confidential by all parties to this process unless there is an agreement for publicity.

Wood Duck photo by Eric Dresser

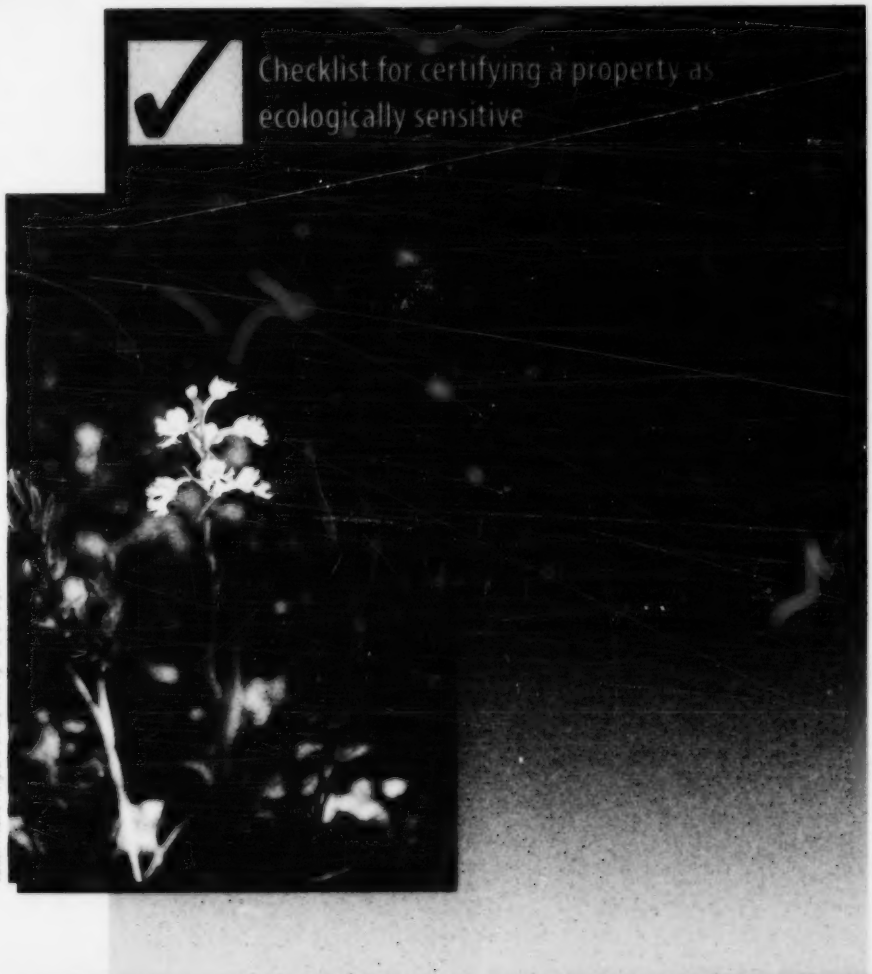
Certifying a Property as Ecologically Sensitive

Step THREE
Environment Canada reviews and issues Certificate

Review of the submitted materials and completion and signing of the *Certificate* usually takes two to four weeks, provided there are no major issues to be resolved. Special circumstances requiring faster turn around can often be accommodated. Environment Canada may ask to visit the property prior to certification.

If the completion of an ecogift donation is delayed or terminated after the *Certificate* has been issued, recipients or donors should notify Environment Canada-Ontario Region staff.

Certificates for Donation of Ecologically Sensitive Land are issued directly to the donor, with a copy to the recipient. At that time, a Gift ID number is assigned. *It expedites matters if all future correspondence from donors and recipients regarding the donation references this Gift ID number.*



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Checklist for certifying a property as ecologically sensitive

- ✓ Supporting information gathered on ecological character of property
- ✓ Information filed with Environment Canada
- ✓ Copy of *Certificate for Donation of Ecologically Sensitive Land* received
- ✓ Notify Environment Canada if unexpected delays occur

Certifying the Value of the Donation

The fair market value of all gifts under the Ecological Gifts Program must be certified by the Minister of the Environment (Environment Canada). To facilitate this process, donors must submit independent appraisals of donated lands or conservation easements along with signed *Applications for Appraisal Review and Determination*. These appraisals are then reviewed by an Appraisal Review Panel (qualified appraisers) under the Standards of the Appraisal Institute of Canada, who recommend a fair market value for each gift to the Minister (Environment Canada). The *Application for Appraisal Review and Determination* is available from EGP-Ontario Region staff and the EGP-National Web site.

In practice, this means a four-step process for donors and recipients.

The four-step value certification process

Step ONE
Commission an appraisal of fair market value

Step TWO
Submit the appraisal for review and determination

Step THREE
Receive a Notice of Determination of Fair Market Value

Step FOUR
Statement of Fair Market Value and official donation receipt

Certifying the Value of the Donation

ONTARIO ECOGIFTS HANDBOOK

Step ONE
Commission an appraisal of fair market value

Either the donor or the recipient can commission an appraisal to establish the fair market value of the ecogift. The qualifications of the appraiser may differ, depending on the size and complexity of the gift. For gifts that have a value of less than $25,000 and are straightforward to value, there is some flexibility in the choice of appraisers, provided they can establish their competence in this field. For all gifts over $25,000, and those of a more complex nature (such as conservation easements), the appraiser must hold the designation of Accredited Appraiser Canadian Institute (AACI) or equivalent.

Ecogift valuation training courses for ecogift appraisers have been held across Canada to help improve knowledge and understanding of requirements specific to the EGP. Appraisers being considered should be asked whether they have completed this training.

In most cases, a single appraisal is sufficient. For ecogifts that have a high fair market value or that are particularly complex to value, a second valuation report may be required.

Usually one appraisal is all that is needed. But a high-value gift, or one with out-of-the-ordinary factors such as valuable standing timber, might require a second appraisal.

Finding an appraiser

For assistance finding an appraiser who has been trained in the valuation of ecogifts, visit the Appraisal Institute of Canada's Web site at www.aicanada.org or contact the Institute at 1-800-441-8062 or mail@aicanada.org.

In selecting and instructing an appraiser, the following factors should be considered and incorporated.

- The EGP has issued *Guidelines for Appraisals* (current July 2002), which appraisers are required to follow. These Guidelines are updated periodically and available from EGP-Ontario Region staff. They are posted on the EGP-National Web site. The Guidelines address factors that appraisers should consider, and include a series of self-certification statements which appraisers must sign and include in their appraisal reports.
- The appraiser should have experience both in the location of the property and the type of real estate interest involved (e.g., fee simple, conservation easement).
- Specify that the valuation report (i.e., the appraisal) for an ecogift must also conform to the Canadian Standards of Professional Appraisal Practice (The Standards). These are available on-line at www.aicanada.org.
- If the assignment involves a partial interest in land (such as a conservation easement), the appraiser must have a copy of the completed (or nearly completed) agreement when doing the appraisal. This agreement must be included when the appraisal report is submitted for review.
- Three copies of a complete narrative report (not a brief summary report) are required for submission to Environment Canada, with additional copies for the donor and the recipient. Photocopies are acceptable except for any photographs or detailed maps.
- All appraisal reports will be reviewed by one or more members of the Appraisal Review Panel, who are also qualified appraisers. The appraiser should be instructed to include clear information on the logic and reasoning employed to analyze the subject property, comparable sales, and to draw conclusions. Basic information that requires full analysis and discussion of their effects on the value conclusions should include the appraiser's analysis of highest and best use, zoning, Official Plan/Master

Certifying the Value of the Donation

Plans, restrictions that may already be registered on the property, and possible new restrictions under a conservation easement. Because the reviewer may not have the opportunity to visit the property or inspect the comparables, full descriptions are a must, along with exhibits (in colour where possible) such as maps, surveys, and photographs.

- Appraisers should be particularly cautioned that no unsupported assumptions that would have an impact on highest and best use will be permitted.
- Donors and recipients may wish to work with their appraiser early in the donation process to establish the value of the gift. The appraisal itself, however, must be effective not more than six months before Environment Canada receives the application. Ideally, the appraisal date should be as close to the application date and/or donation date as possible, especially if the land in question may be subject to a rapidly changing land market.

For more information on the Appraisal Review Panel, see the EGP publication: *Appraisal Review Panel Operational Guidelines*.

Step TWO
Submit the appraisal for review and determination

Three colour copies of the completed appraisal should be submitted to the Ecological Gifts Program, Canadian Wildlife Service, Environment Canada, 4905 Dufferin St., Downsview, ON, M3H 5T4, along with a signed and dated *Application for Appraisal Review and Determination*. Application forms are available from EGP-Ontario Region staff. See sample, page 24. Incomplete application forms may be returned for more information.

Applications are accepted at any time. However, if a *Notice of Determination of Fair Market Value* from Environment Canada is desired before the end of a calendar year, applications should be submitted by mid-September.

Certifying the Value of the Donation

Step THREE
Receive a Notice of Determination of Fair Market Value

Following the review of the appraisal by one or more members of the Appraisal Review Panel, the donor will receive a *Notice of Determination of Fair Market Value* informing him/her of the value that the Minister of the Environment (Environment Canada) is prepared to certify. The recipient is sent a copy of this *Notice*. In many cases, this value will be the same as the value outlined in the appraisal, but the Panel may recommend a modified value to the Minister. In most cases, when the appraisal conforms to the Guidelines, this process takes less than 90 days. Requests for more information or clarification for the Panel are sent to recipients and/or donors by EGP-Ontario Region staff.

The fair market value on the *Notice* applies to that property in relation to all income tax purposes related to charitable donations and gifts for two years from the date of the *Notice*.

When the *Notice of Determination of Fair Market Value* is received, a donor has three options, which he/she must exercise within 90 days:

- accept the value as determined, notify Environment Canada, and proceed to complete the donation process with the recipient;
- request in writing a redetermination by the Redetermination Committee of the Appraisal Review Panel at their next scheduled meeting; or,
- withdraw from the Ecological Gifts Program, notifying Environment Canada in writing.

Donors may re-enter the EGP at any point within two years of the date of the *Notice* at the same point at which they withdrew.

Redetermination

A donor requesting a redetermination of fair market value should provide details of factors or circumstances pertaining to the proposed ecogift, as well as any new information that could affect the decision of the Redetermination Committee of the Appraisal Review Panel, such as a second appraisal.

The Redetermination Committee makes its recommendation to the Minister as to the fair market value of the ecogift within 60 days of completing its redetermination. The Minister issues a *Notice of Redetermination of Fair Market Value* after considering the recommendation received from the Committee.

Even if a donor withdraws, the fair market value determined for the property in relation to all income tax purposes related to charitable donations and gifts remains fixed for two years from the date of the *Notice of Determination of Fair Market Value.*

Red-winged Blackbird/photo by: Walter B. Fechner

Step THREE
Receive a Notice of Determination of Fair Market Value

Following the review of the appraisal by one or more members of the Appraisal Review Panel, the donor will receive a *Notice of Determination of Fair Market Value* informing him/her of the value that the Minister of the Environment (Environment Canada) is prepared to certify. The recipient is sent a copy of this *Notice*. In many cases, this value will be the same as the value outlined in the appraisal, but the Panel may recommend a modified value to the Minister. In most cases, when the appraisal conforms to the Guidelines, this process takes less than 90 days. Requests for more information or clarification for the Panel are sent to recipients and/or donors by EGP-Ontario Region staff.

The fair market value on the *Notice* applies to that property in relation to all income tax purposes related to charitable donations and gifts for two years from the date of the *Notice*.

When the *Notice of Determination of Fair Market Value* is received, a donor has three options, which he/she must exercise within 90 days:

- accept the value as determined, notify Environment Canada, and proceed to complete the donation process with the recipient;
- request in writing a redetermination by the Redetermination Committee of the Appraisal Review Panel at their next scheduled meeting; or,
- withdraw from the Ecological Gifts Program, notifying Environment Canada in writing.

Donors may re-enter the EGP at any point within two years of the date of the *Notice* at the same point at which they withdrew.

Redetermination

A donor requesting a redetermination of fair market value should provide details of factors or circumstances pertaining to the proposed ecogift, as well as any new information that could affect the decision of the Redetermination Committee of the Appraisal Review Panel, such as a second appraisal.

The Redetermination Committee makes its recommendation to the Minister as to the fair market value of the ecogift within 60 days of completing its redetermination. The Minister issues a *Notice of Redetermination of Fair Market Value* after considering the recommendation received from the Committee.

Even if a donor withdraws, the fair market value determined for the property in relation to all income tax purposes related to charitable donations and gifts remains fixed for two years from the date of the *Notice of Determination of Fair Market Value.*

Step FOUR
Statement of Fair Market Value and official donation receipt

Once the donor notifies Environment Canada in writing that he/she accepts the fair market value as determined (by indicating that option, signing and returning the *Notice*), and Environment Canada receives evidence that the gift has been completed (i.e., a copy of the registered transfer/deed and signed conservation easement if applicable), a certified *Statement of Fair Market Value* is issued to the donor, with a copy to the recipient. It is important to note that the registered donation must match the appraised donation (e.g., size, legal description, easement agreement, etc.). Otherwise a letter from the original appraiser regarding the impact of any changes in the donation on the fair market value will be required, along with a review of such a letter by the Appraisal Review Panel. Therefore, for reasons of expediency and cost, it is important that donations and appraisals brought to the EGP are based on the final or near final form of the donation.

The *Statement of Fair Market Value* must accompany the donor's income tax return, and is the basis for issuing an official donation receipt by the recipient. The *Certificate* and donation receipt must also accompany the donor's income tax return.

The official donation receipt is issued by the recipient based on the value of the *Statement*. A detailed list of requirements for official donation receipts from charities is included in the CCRA's publication *Registered Charities and the Income Tax Act* (RC 4108 (E)), which is available on their Web site at www.ccra-adrc.gc.ca/E/pub/tg/rc4108/rc4108eq.html. Municipalities should consult with their own financial staff and the CCRA regarding specific requirements for their official donation receipts.

If, following completion of the donation and receipt, a donor is still unsatisfied with the fair market value determined for the donation, he/she may appeal the fair market value of the gift in court. Donors need to have undertaken the EGP's redetermination step prior to any court appeal.

Checklist for verifying the value of the donation

- ✓ Appraisal meets the required standards
- ✓ Application forms completed and signed by donor(s)
- ✓ Three copies of appraisal submitted with application
- ✓ Donor(s) review and accept value determined, and return signed *Notice*
- ✓ Evidence of completion of gift submitted
- ✓ *Statement* received from Environment Canada
- ✓ Official donation receipt issued, citing date of property transfer

Certifying the Value of the Donation

Step FOUR
Statement of Fair Market Value and official donation receipt

Once the donor notifies Environment Canada in writing that he/she accepts the fair market value as determined (by indicating that option, signing and returning the *Notice*), and Environment Canada receives evidence that the gift has been completed (i.e., a copy of the registered transfer/deed and signed conservation easement if applicable), a certified *Statement of Fair Market Value* is issued to the donor, with a copy to the recipient. It is important to note that the registered donation must match the appraised donation (e.g., size, legal description, easement agreement, etc.). Otherwise a letter from the original appraiser regarding the impact of any changes in the donation on the fair market value will be required, along with a review of such a letter by the Appraisal Review Panel. Therefore, for reasons of expediency and cost, it is important that donations and appraisals brought to the EGP are based on the final or near final form of the donation.

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Checklist for certifying the value of the donation
✓ Donor to review and accept value determined and return signed Notice
✓ Evidence of completion of gift submitted
✓ Statement received from Environment Canada
✓ Official donation receipt issued, citing date of property transfer

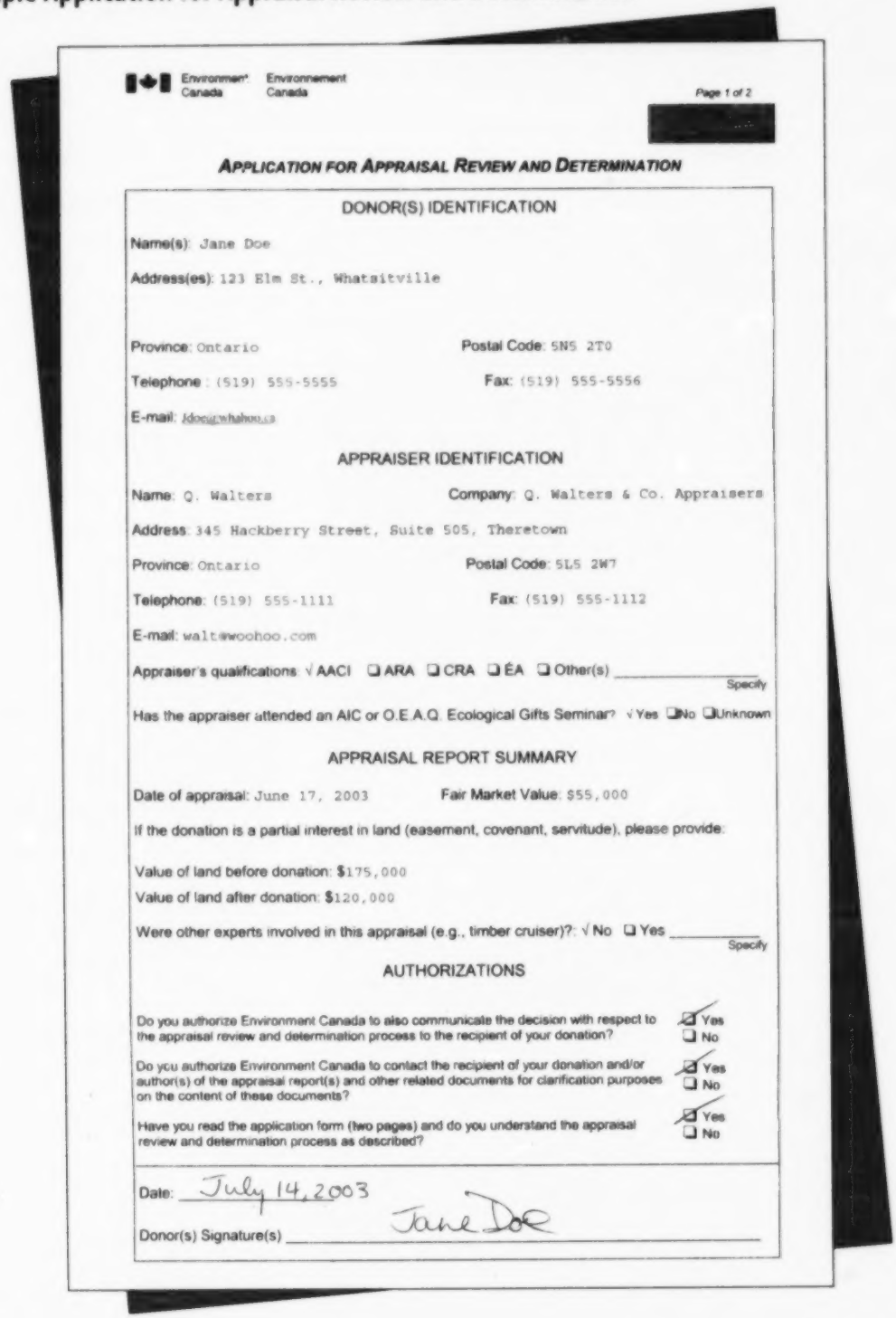
A Final Word

photo by Graham Bryan

The donation of a property of ecological significance, or the voluntary acceptance of the restrictions contained within a conservation easement, are choices that an increasing number of public-spirited Canadians are considering. The EGP can make such a gift more rewarding for many donors – in addition to preserving a cherished piece of land, they can maximize their tax benefits. All ecogifts make a significant contribution to creating a network of protected areas that reaches across virtually every habitat and region of Canada.

Clearly, the EGP relies on its partners to achieve conservation goals. The EGP welcomes questions, comments and suggestions for improving this conservation tool. Please do not hesitate to contact the EGP-National or Ontario Region offices.

Sample Application for Appraisal Review and Determination



Environment Canada / Environnement Canada

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APPLICATION FOR APPRAISAL REVIEW AND DETERMINATION

DONOR(S) IDENTIFICATION

Name(s): Jane Doe

Address(es): 123 Elm St., Whatsitville

Province: Ontario Postal Code: 5N5 2T0

Telephone: (519) 555-5555 Fax: (519) 555-5556

E-mail: jdoe@whahoo.ca

APPRAISER IDENTIFICATION

Name: Q. Walters Company: Q. Walters & Co. Appraisers

Address: 345 Hackberry Street, Suite 505, Theretown

Province: Ontario Postal Code: 5L5 2W7

Telephone: (519) 555-1111 Fax: (519) 555-1112

E-mail: walt@woohoo.com

Appraiser's qualifications: √ AACI ❑ ARA ❑ CRA ❑ ÉA ❑ Other(s) _____ Specify

Has the appraiser attended an AIC or O.E.A.Q. Ecological Gifts Seminar? √ Yes ❑ No ❑ Unknown

APPRAISAL REPORT SUMMARY

Date of appraisal: June 17, 2003 Fair Market Value: $55,000

If the donation is a partial interest in land (easement, covenant, servitude), please provide:

Value of land before donation: $175,000

Value of land after donation: $120,000

Were other experts involved in this appraisal (e.g., timber cruiser)?: √ No ❑ Yes _____ Specify

AUTHORIZATIONS

Do you authorize Environment Canada to also communicate the decision with respect to the appraisal review and determination process to the recipient of your donation? ☑ Yes ❑ No

Do you authorize Environment Canada to contact the recipient of your donation and/or author(s) of the appraisal report(s) and other related documents for clarification purposes on the content of these documents? ☑ Yes ❑ No

Have you read the application form (two pages) and do you understand the appraisal review and determination process as described? ☑ Yes ❑ No

Date: July 14, 2003

Donor(s) Signature(s) Jane Doe

www.on.ec.gc.ca/ecogifts

photo by: Glenn Barrett

Canada